No. 17-1011

# In the Supreme Court of the United States

BUDHA ISMAIL JAM, ET AL., PETITIONERS

*v.*

INTERNATIONAL FINANCE CORPORATION

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF FOR THE UNITED STATES**
**AS AMICUS CURIAE SUPPORTING REVERSAL**


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## QUESTION PRESENTED

The International Organizations Immunities Act generally affords international organizations "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." 22 U.S.C. 288a. The question presented is whether the immunity of international organizations from suit and other judicial process is governed by the immunity standards applicable to foreign governments when the statute was enacted in 1945 or those applicable to foreign governments today.

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## INTEREST OF THE UNITED STATES

The United States' participation in international organizations is a critical component of the Nation's foreign relations and reflects an understanding that robust multilateral engagement is a crucial tool in advancing national interests. The United States participates in or supports nearly 200 international organizations and other multilateral entities, including major international financial institutions such as the International Monetary Fund (IMF) and the World Bank. The United States contributes billions of dollars annually to those organizations and entities. In recognition of the United States' leadership role, nearly 20 international organizations are headquartered in the United States, and many others have offices here. For these reasons, the United States has a substantial interest in the proper

interpretation of the provisions of the International Organizations Immunities Act (IOIA or Act), 22 U.S.C. 288 *et seq.*, that define international organizations' amenability to suit in the United States.

## STATEMENT

1. a. Congress enacted the IOIA in 1945 to provide certain privileges and immunities to international organizations, their officers, and employees. See Pub. L. No. 79-291, 59 Stat. 669 (22 U.S.C. 288, *et seq.*). The Act defines "international organization" as "a public international organization in which the United States participates" pursuant to a treaty or an Act of Congress, and which is designated by the President in an Executive Order "as being entitled to enjoy the privileges, exemptions, and immunities" provided by the Act. 22 U.S.C. 288; see, *e.g.*, Exec. Order No. (EO) 9698, 11 Fed. Reg. 1809 (1946) (designating, among others, the United Nations and the Pan American Union). The Act then grants such international organizations the capacity to contract, to acquire and dispose of real and personal property, and to sue "to the extent consistent with the instrument creating them," 22 U.S.C. 288a(a), as well as a series of privileges, exemptions, and immunities. See 22 U.S.C. 288a-288e.

Some of these privileges, exemptions, and immunities are provided by reference to comparable privileges, exemptions, and immunities enjoyed by foreign states. Of greatest relevance here, the Act provides:

> International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the

> purpose of any proceedings or by the terms of any contract.

22 U.S.C. 288a(b). With respect to customs duties and taxes imposed on imported items, the registration of foreign agents, and the treatment of official communications, the IOIA likewise grants international organizations the "privileges, exemptions, and immunities * * * accorded under similar circumstances to foreign governments." 22 U.S.C. 288a(d). And the IOIA similarly affords the representatives of foreign governments to international organizations, the officers and employees of such organizations, and immediate family residing with such individuals "the same privileges, exemptions, and immunities" under immigration law "as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families." 22 U.S.C. 288d(a).

Other privileges, exemptions, and immunities are provided without reference to those enjoyed by foreign governments. The property and assets of international organizations, for example, are "immune from search, unless such immunity [is] expressly waived, and from confiscation." 22 U.S.C. 288a(c). Similarly, international organizations are "exempt" from all federal property taxes. 22 U.S.C. 288c. Representatives of foreign governments to international organizations, as well as officers and employees of such organizations, are "immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions," absent waiver by the foreign government or the international organization. 22 U.S.C. 288d(b). And the "baggage and effects" of those persons and their families are admitted into the United

States "free of customs duties" or importation taxes. 22 U.S.C. 288b.

Finally, the IOIA authorizes the President to "withhold or withdraw," or to "condition or limit," any of the privileges, exemptions, and immunities provided by the Act "in the light of the functions performed by any [designated] international organization." 22 U.S.C. 288. It further authorizes the President to revoke an entity's designation as an international organization if the President determines that the organization or its personnel have "abuse[d] * * * the privileges, exemptions, and immunities provided [by the Act] or for any other reason." *Ibid.*

b. When Congress enacted the IOIA in 1945, the immunity of foreign states was determined by a "two-step procedure." *Samantar* v. *Yousuf*, 560 U.S. 305, 311 (2010). First, a foreign state "could request a 'suggestion of immunity' from the State Department." *Ibid.* (citation omitted). "If the request was granted, the district court surrendered its jurisdiction." *Ibid.* Second, if the State Department did not inform the court of its views concerning the foreign state's immunity, the court "had authority to decide for itself whether all the requisites for such immunity existed," *i.e.*, "whether the ground of immunity is one which it is the established policy of the [State Department] to recognize." *Id.* at 311-312 (citations omitted).

Historically, the State Department generally subscribed to the "classical or absolute" theory of foreign sovereign immunity. *Republic of Austria* v. *Altmann*, 541 U.S. 677, 690 (2004) (citation omitted). Under that theory, "a sovereign cannot, without his consent, be made a respondent in the courts of another sovereign."

*Ibid.* (citation omitted). Accordingly, "the State Department ordinarily requested immunity in all actions against friendly foreign sovereigns." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). In 1952, however, the State Department announced its adoption of the "restrictive" theory of foreign sovereign immunity, under which foreign states generally are afforded immunity only for their sovereign or public acts, and not for their commercial or other private acts. See Letter from Jack B. Tate, Acting Legal Adviser, to the Attorney General (May 19, 1952), *reprinted in Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 711-714 (1976) (*Tate Letter*).

In the *Tate Letter*, the State Department noted that "for some time" it had "consider[ed] the question whether the practice of the Government in granting immunity from suit to foreign governments made parties defendant in the courts of the United States without their consent should not be changed." 425 U.S. at 711. The Department explained that there were "two conflicting concepts of sovereign immunity, each widely held and firmly established." *Ibid.* And it observed that, although the United States had generally followed the absolute theory, international practice had been trending towards the restrictive theory since at least the 1920s. See *id.* at 712-713. Indeed, the United States itself had "adopted a policy of not claiming immunity for its public owned or operated merchant vessels"—a context of some "importance" in the "field of sovereign immunity." *Id.* at 713; see Suits in Admiralty Act, Pub. L. No. 66-156, 41 Stat. 525 (1920) (46 U.S.C. 30901 *et seq.*).

The Department reasoned that by 1952, "with the possible exception[s]" of the United Kingdom and the Soviet Union, "little support ha[d] been found * * * for

continued full acceptance of the absolute theory." *Tate Letter*, 425 U.S. at 714. It noted that continuing to grant foreign governments absolute immunity in U.S. courts would be inconsistent with the United States' practice of "subjecting itself to suit in these same courts in both contract and tort." *Ibid.* And the Department reasoned that the "widespread and increasing practice on the part of governments of engaging in commercial activities ma[de] necessary a practice which w[ould] enable persons doing business with them to have their rights determined in the courts." *Ibid.* Accordingly, the State Department announced that "it w[ould] [t]hereafter be the Department's policy to follow the restrictive theory of sovereign immunity in the consideration of requests of foreign governments for a grant of sovereign immunity." *Ibid.*

c. Congress subsequently enacted the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1602 *et seq.*, codifying, "as a matter of federal law, the restrictive theory of sovereign immunity." *Verlinden*, 461 U.S. at 488. The FSIA now provides the sole basis for obtaining jurisdiction over a foreign state in a civil case brought in a U.S. court. *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 (1989). Under the FSIA, foreign states and their agencies and instrumentalities are immune unless a claim falls within one of the statute's specified exceptions. 28 U.S.C. 1604. The exceptions permit, *inter alia*, certain actions against a foreign state that arise out of its commercial activities, 28 U.S.C. 1605(a)(2), and certain torts committed in the United States, 28 U.S.C. 1605(a)(5).

2. a. Respondent International Finance Corporation (IFC) is an international organization established by an international agreement to which the United

States is a party. See Articles of Agreement of the International Finance Corporation, *entered into force* July 20, 1956, 7 U.S.T. 2197, T.I.A.S. No. 3620 (Articles of Agreement). The IFC's purpose is "to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas," by among other things, making investments in cases "where sufficient private capital is not available on reasonable terms." *Id.* art. I, I(i). The Articles of Agreement provide that "[a]ctions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office" or other specified connection. *Id.* art. VI, § 3. Actions "brought by members" of the IFC "or persons acting for or deriving claims from members" are prohibited. *Ibid.* The Articles of Agreement further provide for the immunity of IFC property from "seizure, attachment or execution before the delivery of final judgment against Corporation." *Ibid.*

Shortly after the United States signed the Articles of Agreement, Congress enacted the International Finance Corporation Act, authorizing the President "to accept membership for the United States" in the IFC. Pub. L. No. 84-350, § 2, 69 Stat. 669 (1955) (22 U.S.C. 282). The statute also provides for original jurisdiction in United States district courts over any suit brought against the IFC "in accordance with the Articles of Agreement." *Id.* § 8 (22 U.S.C. 282f). And it provides "full force and effect in the United States" to, among other provisions, article VI, § 3 of the Articles of Agreement, relating to the IFC's amenability to suit. *Id.* § 9 (22 U.S.C. 282g). The President subsequently designated the IFC as an international organization "entitled

to enjoy the privileges, exemptions, and immunities conferred by" the IOIA. EO 10,680, 21 Fed. Reg. 7647 (1956).

b. Petitioners are residents of India who live near the Tata Mundra Power Plant in Gujarat. Pet. App. 2a. The IFC provided a loan of $450 million to the owner of the plant for its construction and operation. *Id.* at 3a. In accordance with IFC policy, the loan agreement contained provisions designed to protect local communities, requiring the loan recipient to manage environmental and social risks posed by the financed project. *Id.* at 3a, 25a. The IFC retained supervisory authority over the plant owner's compliance with the environmental and social risks provisions and could revoke financial support for noncompliance. *Id.* at 3a. According to an audit conducted by the IFC's ombudsman, the owner of the plant did not comply with the environmental and social risks provisions; the IFC, however, did not revoke the plant's financing. *Ibid.*

Petitioners sued the IFC, asserting claims that "are almost entirely based on tort," but raising one claim as alleged third-party beneficiaries of the environmental and social risks provisions of the loan agreement. Pet. App. 3a. The district court dismissed petitioners' suit, concluding that it was barred by the court of appeals' decision in *Atkinson* v. *Inter-American Development Bank*, 156 F.3d 1335 (D.C. Cir. 1998). Pet. App. 29a-30a, 37a-38a.[1]

In *Atkinson*, the court of appeals held that, in providing international organizations with the "same immunity * * * as is enjoyed by foreign governments,"

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[1] The district court further determined that article VI, § 3 of the Articles of Agreement did not waive the IFC's immunity from suit, under the standards the court of appeals adopted in *Mendaro* v. *World Bank*, 717 F.2d 610 (D.C. Cir. 1983). Pet. App. 30a-37a.

22 U.S.C. 288a(b), Congress intended to adopt foreign sovereign immunity law "only as it existed in 1945—when immunity of foreign sovereigns was absolute." 156 F.3d at 1341. The court reasoned that the statutory text lacked "a clear instruction as to whether Congress meant to incorporate into the IOIA subsequent changes to the law of immunity of foreign sovereigns." *Ibid.* But it believed that by authorizing the President to modify a designated organization's immunities for abuse or other reasons under 22 U.S.C. 288, Congress "delegate[d] to the President the responsibility for updating the immunities of international organizations in the face of changing circumstances." *Atkinson*, 156 F.3d at 1341. The court also found telling a statement in the Senate Report explaining that the President could restrict an international organization's immunity if it engaged in "activities of a commercial nature." *Ibid.* (quoting S. Rep. No. 861, 79th Cong., 1st Sess., 2 (1945) (Senate Report)).

Noting that it was bound by *Atkinson*'s interpretation, the court of appeals in this case affirmed the district court's dismissal of petitioners' suit. Pet. App. 4a-7a.[2] Judge Pillard concurred for the same reason, but wrote separately to express the view that *Atkinson* was wrongly decided. *Id.* at 12a-22a. Judge Pillard reasoned that "[w]hen a statute incorporates existing law by reference, the incorporation is generally treated as dynamic, not static," and incorporates changes to the incorporated body of law. *Id.* at 12a-13a. She concluded

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[2] The court of appeals also affirmed the district court's determination that the IFC had not waived its immunity under *Mendaro*, *supra*. Pet. App. 7a-11a. This Court declined to grant further review of that determination. See 138 S.Ct. 2026 (2018) (granting certiorari "limited to Question 1"); Pet. i.

that *Atkinson* was mistaken in relying on the President's ability under the IOIA to restrict international organizations' immunity, because, in her view, that authority is "organization- and function-specific" and does not authorize the President generally to modify the applicable standard. *Id.* at 13a-14a. And she noted that Congress had considered and rejected a provision that would have expressly granted absolute immunity to international organizations. *Id.* at 14a-15a (discussing H.R. 4489, 79th Cong., 1st Sess. § 2(b)). Judge Pillard further explained that *Atkinson*'s static interpretation conflicted with the "considered view" of the State Department that international organizations are subject to suit for commercial activities by virtue of the FSIA's enactment. *Id.* at 15a. Finally, Judge Pillard stated that it made no sense to permit commercial suits against a foreign state acting alone, but not when states act in concert through an international organization. *Id.* at 16a.

## SUMMARY OF ARGUMENT

Section 288a(b) of the IOIA affords designated international organizations the same jurisdictional immunity as is currently enjoyed by foreign states, not as was enjoyed in 1945.

A. The text, structure, and history of the IOIA support this interpretation. Congress's use of the present-tense phrase—"as is enjoyed"—is most naturally read to refer to the immunity afforded to foreign sovereigns when the statute is applied, not some 70 years in the past. If Congress had intended a backward-looking inquiry, it could have stated that international organizations shall be afforded the same immunity "as was enjoyed on the Act's effective date" or something similar. Congress's decision not to use such language is telling, particularly in light of the background principle that

statutory references to other bodies of law generally incorporate subsequent amendments to the referenced body of law.

This interpretation of Section 288a(b) is further supported by the structure of the IOIA. While Congress defined some protections for international organizations by reference to the protections afforded foreign governments, it defined others under a specific substantive standard. That suggests that, if Congress had intended to adopt a particular standard for international organizations' immunity from suit, it would have done so expressly—particularly given that, at the time, international consensus was trending towards the restrictive theory and the State Department itself had declined to recognize immunity in suits involving foreign state-owned vessels engaged in commercial activities.

Finally, the history of the IOIA also supports affording international organizations the same jurisdictional immunity as is afforded foreign states at the time of suit. As originally passed by the House of Representatives, Section 288a(b) expressly afforded international organizations absolute immunity from suit. But the Senate stripped the grant of absolute immunity and replaced it with the current language. This Court ordinarily assumes that Congress did not intend *sub silentio* to enact statutory language that it earlier discarded.

B. The conduct of the Executive Branch under the IOIA and subsequent congressional enactments further support this interpretation.

The process for affording privileges and immunities to international organizations typically proceeds in three parts: (1) the Executive Branch enters into an agreement to form an international organization; (2) Congress authorizes the United States' participation; and (3) the

President issues an Executive Order designating the organization as entitled to the privileges and immunities afforded by the IOIA. But when agreements require the United States to afford the organization absolute immunity from suit (and the agreement is not a self-executing treaty), Congress has provided for such immunity by separate legislation. If the court of appeals were correct that the IOIA grants international organizations absolute immunity from suit, such legislation would be redundant.

Moreover, in those and other circumstances, the State Department has made clear its view that the jurisdictional immunity afforded by the IOIA tracks the immunity afforded to foreign governments under the FSIA. This longstanding interpretation—evinced by actions of both political Branches—deserves deference.

C. Adopting the court of appeals' interpretation of Section 288a(b) would present practical difficulties. First, courts would have to decide whether the provision incorporates the *substantive* rules of foreign sovereign immunity applicable in 1945 or the *procedural* ones. The court of appeals and respondent have both assumed that Section 288a(b) incorporates only the then-existing substantive standards, but neither explains why that would be so. And even if only the substantive standards were incorporated, there could remain some uncertainty in determining the contours. Although the State Department afforded virtually absolute immunity from suit to foreign governments in 1945, there was some uncertainty regarding the immunity of state-owned merchant vessels and companies engaged in commercial activity. Under the court of appeals' view, courts would have to determine any disputed metes and bounds of

foreign sovereign immunity, as they existed in the policies of the State Department and in federal courts some 70 years in the past—and perhaps in circumstances that neither ever faced or that did not closely fit the situation of a particular international organization.

Respondent raises policy concerns about an interpretation of Section 288a(b) under which an international organization's immunity would conform to that of a foreign state at the time of suit. Those concerns are misplaced and cannot justify disregarding the plain text of the statute. In any event, the legislative history of the IOIA is replete with statements reflecting a commitment to put international organizations' immunity on par with that afforded to foreign sovereigns. That the IOIA leaves respondent subject to suit in similar circumstances as foreign governments today is consistent with Congress's judgment in Section 288a(b).

## ARGUMENT

### THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT AFFORDS DESIGNATED INTERNATIONAL ORGANIZATIONS THE SAME JURISDICTIONAL IMMUNITY AS IS CURRENTLY ENJOYED BY FOREIGN STATES

The IOIA provides that international organizations "enjoy the same immunity from suit * * * as is enjoyed by foreign governments." 22 U.S.C. 288a(b). The text, structure, and history of the Act, as well as Executive Branch practice and related congressional enactments, all confirm that the jurisdictional immunity afforded by the Act is the jurisdictional immunity currently enjoyed by foreign states and as it might be modified over time, not as it existed when the Act was enacted in 1945. The court of appeals' contrary determination is incorrect, would present practical difficulties for federal courts,

and is not justified by the policy concerns that respondents invoke.

### A. The Text, Structure, And History Of The IOIA Support Application Of The Same Immunity Enjoyed By Foreign States To International Organizations

1. In construing Section 288a(b), this Court should "begin, as always, with the text of the statute." *Permanent Mission of India to the U.N.* v. *City of N.Y.*, 551 U.S. 193, 197 (2007). Section 288a(b) provides simply that "[i]nternational organizations * * * shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." 22 U.S.C. 288a(b). On its face, the plain text of this provision strongly suggests that the Act affords international organizations the immunity that is enjoyed by foreign governments today, not the immunity enjoyed by foreign governments in 1945.

a. To begin, Congress's use of the present tense—"as is enjoyed"—supports that interpretation. This Court has "frequently looked to Congress' choice of verb tense to ascertain a statute's temporal reach." *Carr* v. *United States*, 560 U.S. 438, 448 (2010); see, *e.g.*, *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 478 (2003) ("[T]he plain text of this provision, because it is expressed in the present tense, requires that instrumentality status [under the FSIA] be determined at the time suit is filed."); *United States* v. *Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Barrett* v. *United States*, 423 U.S. 212, 216 (1976) (reasoning that Congress's use of the present perfect tense denoted "an act that has been completed" by the time of the offense "without ambiguity"). Here, because Section 288a employs the present tense to make the comparison to foreign sovereign

immunity, the statute is most naturally read to refer to the immunity granted to foreign sovereigns at the time that the statute is applied, not some 70 years in the past. "Congress could have phrased its requirement in language that looked to the past"—here, by referring to a foreign government's immunity on the IOIA's enactment date—"but it did not choose this readily available option." *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Found., Inc.*, 484 U.S. 49, 57 (1987). "[R]espect for Congress's prerogatives as policymaker means carefully attending to the words it chose rather than replacing them with others of [the Court's] own." *Murphy* v. *Smith*, 138 S. Ct. 784, 788 (2018).

b. Congress's choice of words is particularly instructive here, in light of background principles of statutory interpretation for references of this sort. As one prominent treatise explains, "[w]hen a statute adopts the general law on a given subject, the reference is construed to mean that the law is as it reads thereafter at any given time including amendments subsequent to the time of adoption." 2B Norman J. Singer, et al., *Sutherland Statutes & Statutory Construction* § 51:7 (7th ed. rev. 2012) (citation omitted); see, *e.g.*, *El Encanto, Inc.* v. *Hatch Chile Co.*, 825 F.3d 1161, 1164 (10th Cir. 2016); *United States* v. *Rodriguez-Rodriguez*, 863 F.2d 830, 831 (11th Cir. 1989); cf. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 7, at 90 (2012) ("A legal text referring to a statutorily defined term is understood to have a silent gloss, 'as the definition may be amended from time to time.'").

This proposition well pre-dates the IOIA's enactment. See 2 J.G. Sutherland, *Sutherland Statutes & Statutory Construction* § 405, at 789 (John Lewis ed. 1904) (citing, *e.g.*, *Culver* v. *People*, 43 N.E. 812, 814 (Ill.

1896)). And it reaffirms the most natural reading of the text. See *Gaston* v. *Lamkin*, 21 S.W. 1100, 1103 (Mo. 1893) (describing the typical statute to which this principle applies as one that refers "generally to the established law, by some such expression as 'the same as is provided for by law' in given cases") (citation omitted).

2. This interpretation of Section 288a(b) is further supported by the structure of the IOIA. See *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.").

While Congress defined some privileges and immunities of international organizations and their officers and employees by reference to the immunity of foreign governments, it defined other privileges and immunities under a specific substantive standard. *Compare* 22 U.S.C. 288a(b) and (d), 288d, *with* 22 U.S.C. 288a(c), 288c, and 288d(b); see pp. 2-4, *supra*. This distinction suggests that, if Congress had intended to adopt a particular fixed standard for international organizations' immunity from suit, it would have done so expressly. See *Sebelius* v. *Cloer*, 133 S. Ct. 1886, 1894 (2013) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted).

That is especially so here, given that in the international community at the time of the IOIA's enactment, there were "two conflicting concepts of sovereign immunity, each widely held and firmly established." *Tate Letter*, 425 U.S. at 711. Although the State Department

still subscribed to the absolute theory of immunity in 1945, international consensus had been trending towards the restrictive theory. *Id.* at 712-713. And, when the State Department formally adopted the restrictive theory just seven years later, it explained that it had been considering the change "for some time." *Id.* at 711; pp. 4-6, *supra*; see *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 669 (1979) ("[C]ourts, in construing a statute, may with propriety recur to the history of the times when it was passed * * * to ascertain the reason as well as the meaning of particular provisions in it.") (citation omitted).

In fact, in suits filed not directly against foreign sovereigns, but instead in *in rem* suits against foreign state-owned merchant vessels, the State Department by 1945 had declined to recognize immunity. *The Pesaro*, for example, was an admiralty suit brought against an Italian state-owned vessel operated by employees of a government ministry "engaged in commercial trade carrying passengers and goods for hire." 277 F. 473, 473-474 (S.D.N.Y. 1921). The State Department informed the court that "government-owned merchant vessels" or privately owned vessels requisitioned by foreign states and "employed in commerce" are not "entitled to the immunities accorded public vessels of war." *Id.* at 479 n.3;[3] see 2 Green Haywood Hackworth, *Digest of International Law* § 173, at 438-439 (1941) (reproducing letter from Fred K. Nielsen, Solicitor for Department of State, to Julian W. Mack, U.S. District Judge (Aug. 2, 1921)); see also *id.* at 423-465 (discussing

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[3] This Court subsequently recognized immunity for the vessel, however, despite the State Department's decision not to do so. See *Berizzi Bros. Co.* v. *Steamship Pesaro*, 271 U.S. 562, 574 (1926).

State Department practice between 1914 and 1938 concerning immunity of state-owned merchant vessels).

Then, just months before Congress enacted the IOIA, this Court deferred to the State Department's decision to refrain from suggesting immunity for a vessel that was owned by the Republic of Mexico, but in the possession of a private corporation that had contracted with Mexico to use the vessel for commercial purposes, with a share of the profits paid to Mexico. *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 34 (1945). The State Department "certified that it recognize[d]" Mexico's ownership, but "refrained from certifying that it allow[ed] the immunity." *Id.* at 36. Relying heavily on the State Department's statement, the Court held that the suit could proceed. *Id.* at 38; see *ibid.* ("[I]t is the duty of the courts, in a matter so intimately associated with our foreign policy and which may profoundly affect it, not to enlarge an immunity to an extent which the government, although often asked, has not seen fit to recognize.").[4]

When the State Department adopted the restrictive theory in 1952, it noted "the importance played by cases involving public vessels in the field of sovereign immunity." *Tate Letter*, 425 U.S. at 713; see, *e.g.*, *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983) (noting that "[a]lthough the narrow holding of *The Schooner Exchange* [v. *McFaddon*, 11 U.S. (7 Cranch) 116 (1812)] was only that the courts of the United States lack jurisdiction over an armed ship of a foreign state found in our port, that opinion came to be regarded as extending virtually absolute immunity to

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[4] The Court in *Hoffman* criticized the Court's failure in *Pesaro* to consider that "the political branch of the government" had declined to recognize immunity in that suit. 324 U.S. at 35 n.1.

foreign sovereigns"). In light of the State Department's own practice in such cases leading up to enactment of the IOIA, developments in foreign sovereign immunity law could be expected. Congress therefore would have had reason to directly enact a standard of absolute immunity for international organizations, if that is what it sought to afford regardless of any future developments in the law.

3. Finally, the drafting history of the IOIA also supports an interpretation of Section 288a(b) that ties an international organization's jurisdictional immunity to that accorded foreign states at the time of suit.

a. As originally passed by the House of Representatives, what is now Section 288a(b) expressly defined the immunity standard for international organizations. The bill provided: "International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy immunity from suit and every form of judicial process [unless waived]." H.R. 4489, 79th Cong. § 2(b) (passed by the House of Representatives, Nov. 20, 1945); see 91 Cong. Rec. 10,867 (1945). If the House's version had been enacted, there could be no question that such organizations would be entitled to absolute immunity from suit, regardless of any departure from such immunity for foreign governments. But, of course, that did not occur. Instead, the Senate amended Section 288a(b), stripping the grant of absolute immunity and replacing it with a reference to "the same immunity * * * as is enjoyed by foreign governments." H.R. 4489, 79th Cong. § 2(b) (passed by the Senate, Dec. 20, 1945); see 91 Cong. Rec. 12,432 (1945). The House accepted the Senate amendment without objection. 91 Cong. Rec. 12,532 (1945).

"Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442–443 (1987); accord *Chickasaw Nation* v. *United States*, 534 U.S. 84, 93 (2001). There is no sound basis for departing from that principle here.

b. Indeed, other aspects of the legislative history confirm the significance of that change. By contrast to Section 288a(b), the Senate left unchanged other provisions that expressly define certain privileges and immunities. *Compare* H.R. 4489, 79th Cong. §§ 2(c), 3, 6, and 7(b) (passed by the House, Nov. 20 1945), *with* IOIA §§ 2(c), 3, 6, and 7(b), 59 Stat. 669, 671, 672; see Pet. App. 14a-15a (Pillard, J., concurring) (noting comparison). The Senate Report explained that, "[i]n general," the amended bill would provide "privileges and immunities * * * similar to those granted by the United States to foreign governments and their officials," except that, in some circumstances, it would confer "somewhat more limited" protections. Senate Report 3. The examples of the more limited privileges and immunities identified by the Senate Report are those for which Congress expressly identified the applicable standard. *Ibid.*

The Senate Report thus reflects Congress's intent that international organizations' immunity track the immunity of foreign states, except where Congress specified a lower standard. See also 91 Cong. Rec. at 12,531 (explaining that "all of th[e Senate's] amendments limited provisions that were unanimously passed by the House"). Nothing in the legislative history suggests that Congress intended for international organizations to have

greater immunity than that enjoyed by foreign states, as would be the case under the court of appeals' view.

4. Despite the text, structure, and history of Section 288a(b), the court of appeals reiterated its conclusion from *Atkinson* v. *Inter-American Development Bank*, 156 F.3d 1335 (1998), that Section 288a grants international organizations "complete immunity" from suit, "unless it is waived or the President intervene[s]." Pet. App. 6a. For that conclusion, the *Atkinson* court relied on two observations, neither of which supports its interpretation of Section 288a(b). See 156 F.3d at 1341.

a. First, the *Atkinson* court reasoned that, in authorizing the President to "modify, condition, limit, and even revoke" what the court believed was "the otherwise absolute immunity of a designated organization," Congress created "an explicit mechanism for monitoring the immunities of designated international organizations." 156 F.3d at 1341 (citing 22 U.S.C. 288). According to the court, Congress's choice "to delegate to the President the responsibility for updating the immunities of international organizations in the face of changing circumstances" is incompatible with the view that Congress intended international organizations' immunity to track developments in foreign sovereign immunity. *Ibid.* The court of appeals erred.

The IOIA authorizes the President to restrict the immunities provided to international organizations in two ways: (1) it gives the President authority to "revoke the designation of any international organization" if the President determines that the international organization has "abuse[d]" the privileges, exemptions, or immunities conferred by the IOIA or "for any other reason"; and (2) it permits the President "to withhold or withdraw from any [international] organization or its

officers or employees any of the privileges, exemptions, and immunities provided for" by the IOIA, or to "condition or limit" such protections, "in the light of the functions performed by any such international organization." 22 U.S.C. 288.

The statutory authority to revoke a specific organization's status for abuse or other reason does not address the immunity standard applicable to international organizations generally. And the authority to modify the immunities afforded to "any such organizations or its officers or employees," "in light of the functions performed by any such organization," is not inconsistent with the prospect that the immunity afforded international organizations, as a class, may be altered through other means. As Judge Pillard observed (Pet. App. 13a), the President's authority under Section 288 is most naturally read as focusing on the need for discretion to adjust a *specific* organization's immunity, if the extension of the full immunities provided by the statute would be inappropriate in light of the *specific* purposes of the organization. Indeed, that is how the President has exercised his Section 288 authority in the past.[5] But assuming that Section 288 would also permit the President to modify certain immunities afforded to international organizations on a more categorical basis, the provision's focus on the functions performed and immunities enjoyed by specific organizations does not suggest that Section 288 was intended to exclude all other

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[5] See, *e.g.*, EO 12,425, 48 Fed. Reg. 28,069 (1983) (recognizing the International Criminal Police Organization as an international organization under the IOIA, but limiting the privileges and immunities conferred by that designation); EO 11,718, 38 Fed. Reg. 12,797 (1973) (same for the International Telecommunications Satellite Organization).

means—including future legislation—of broadly altering the immunity principles applicable to foreign governments and therefore to international organizations generally.

b. Second, the *Atkinson* court found support for its reading of Section 288a(b) in a passage from the Senate Report observing that the authority given to the President in Section 288 would permit "the adjustment or limitation of the privileges in the event that any international organization should engage, for example, in activities of a commercial nature." 156 F.3d at 1341 (quoting Senate Report 2). In the court's view, that reference indicated that the "concerns that motivated the State Department to adopt the restrictive immunity approach" in the *Tate Letter* "(and Congress to codify those principles in the FSIA in 1976) were apparently taken into account by the 1945 Congress." *Ibid.*

The court's reading of the legislative history, however, is mistaken. The Senate Report was responding to a concern that particular organizations might abuse the immunities provided by the bill. As Representative Robertson explained, the amendment ensured that, "if some organization starts functioning here and goes beyond the scope for which it was created, let us say [it] starts into business over here," Section 288 would allow the President to appropriately respond. 91 Cong. Rec. at 12,530; see *ibid.* (noting the "very hypothetical case" that a foreign representative to the United Nations "would open up a shipping business"); see also 91 Cong. Rec. at 12,432 (explaining that the Senate's amendments, including authorizing the President to withdraw immunities, were for the "purpose of safeguarding against the possibility of abuse of privilege"). The legislative history does not suggest that Section 288a was

intended to lock in the scope of immunity that organizations received as a general matter.

Moreover, even if Congress did expect Section 288 to provide the President a mechanism for adjusting the privileges and immunities of all international organizations in the event such organizations began to be formed with the purpose of participating in commercial activities, that would not support the court of appeals' interpretation of Section 288a(b). As discussed above, there is no indication from the text or legislative history that Congress intended Section 288 to provide the *sole* mechanism for addressing such developments. In any event, preventing foreign sovereigns from claiming immunity for commercial activities was not the only motivation for adopting the restrictive theory. See *Tate Letter*, 425 U.S. at 714 (noting that the restrictive theory was most consistent with the United States' "subjecting itself to suit in [U.S.] courts in both contract and tort"); 28 U.S.C. 1605(a)(1)-(6) (providing exceptions to jurisdictional immunity unrelated to commercial activities, *e.g.*, for certain domestic torts).

### B. The Conduct Of The Political Branches Following Enactment Of The IOIA Supports Affording International Organizations The Jurisdictional Immunity Currently Enjoyed By Foreign Sovereigns

The conduct of the Executive Branch under the IOIA and subsequent congressional enactments further support the view that the standard set out in Section 288a(b) follows changes in foreign sovereign immunity law. See *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 385-386 (2000) (while this Court "do[es] not unquestioningly defer to the legal judgments expressed in Executive Branch statements when" inter-

preting a federal statute, it has "consistently acknowledged that the 'nuances' of 'the foreign policy of the United States . . . are much more the province of the Executive Branch and Congress than of this Court'") (citation omitted).

1. The cooperative process followed by the Executive Branch and Congress in recognizing immunity for international organizations demonstrates that the political Branches have long followed this interpretation of the immunities afforded by Section 288a(b). The privileges and immunities in the IOIA are typically provided to international organizations through a three-part process. The Executive Branch enters into an agreement with one or more foreign governments to form an international organization. See, *e.g.*, Articles of Agreement of the International Development Association, *entered into force*, Sept. 24, 1960, 11 U.S.T. 2284, T.I.A.S. No. 4607. Congress (or the Senate through its consent to a treaty) authorizes participation by the United States in the international organization. See, *e.g.*, 22 U.S.C. 284 (authorizing the President "to accept membership" in the International Development Association). And the President issues an Executive Order recognizing the organization as an international organization within the meaning of the IOIA, entitled to the protections that Act affords. See, *e.g.*, EO 11,966, 42 Fed. Reg. 4331 (1977) (designating the International Development Association as a "public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the [IOIA]").

Some agreements creating international organizations, however, require the member states to afford the organization specific immunities beyond those expressly provided by the IOIA. The agreement establishing

the World Trade Organization (WTO), for example, requires member states to afford it absolute immunity from suit in their courts, unless waived by the WTO. See Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), art. VIII(4), *entered into force* Jan. 1, 1995, 1867 U.N.T.S. 154 (requiring members to provide the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies (Specialized Agencies Convention), *entered into force* Dec. 2, 1948, 33 U.N.T.S. 261); Specialized Agencies Convention, art. III, § 4 (affording UN specialized agencies "immunity from every form of legal process," unless waived).

For such organizations, mere designation under the IOIA would not fulfill the United States' international commitment precisely because the IOIA does not confer absolute immunity from suit. In those circumstances, where the agreement was not a self-executing treaty,[6] Congress has either (1) authorized the President to implement the immunity provisions in the applicable agreement, see, *e.g.*, 19 U.S.C. 3511(b) (authorizing the President to implement the WTO Agreement's immunity provisions); or (2) provided such immunity by separate legislation, see, *e.g.*, 22 U.S.C. 286h (giving "full force and effect in the United States" to immunity provisions of the Articles of Agreement of the IMF, *entered into force* Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39).[7]

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[6] A self-executing treaty is equivalent to an Act of Congress and requires no legislation to make its provisions enforceable. See *Medellin* v. *Texas*, 552 U.S. 491, 505 (2008).

[7] Notably, the IFC Act gives "full force and effect in the United States," 22 U.S.C. 282g, to the section of the IFC's Articles of Agreement establishing the "position of the corporation with regard to judicial process," art. VI, § 3 (capitalization altered). But unlike

Such legislation ensures that, notwithstanding the United States' adoption of the restrictive theory or any future developments in foreign sovereign immunity, the United States fulfills its obligations to the international organization. But, under the court of appeals' interpretation of Section 288a, such legislation would be redundant.

2. The provision of privileges and immunities for the Organization of American States (OAS) is similarly instructive. The OAS was formed in 1951 in its current structure through a multilateral treaty that provided that the organization would enjoy "such legal capacity, privileges and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes." Charter of the Organization of American States, art. 103, *entered into force*, Dec. 13, 1951, 2 U.S.T. 2394, T.I.A.S. No. 2361. After the Charter was ratified by the United States, the President designated the OAS as an international organization "entitled to enjoy the privileges, exemptions, and immunities conferred by the [IOIA]." EO 10,533, 19 Fed. Reg. 3289 (1954).

Forty years later, the United States agreed to afford the OAS more extensive immunity. In 1994, the Senate gave its advice and consent to the ratification of the Headquarters Agreement Between the Government of the United States of America and the Organization of American States, *signed at Washington* May 14, 1992, S. Treaty Doc. No. 40, 102d Cong., 2d Sess. (1992);

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the agreement creating the IMF, the IFC's Articles of Agreement do not require absolute immunity from suit. *Compare* IMF Articles of Agreement, art. IX, § 3 (stating that the IMF shall "enjoy immunity from every form of judicial process," unless waived), *with* IFC Articles of Agreement, art. VI, § 3 (stating that "[a]ctions may be brought against the Corporation" in courts of member states in which the IFC has a specified connection).

140 Cong. Rec. 28,361 (1994). In contrast to the OAS Charter, the Headquarters Agreement provides the OAS with absolute immunity from suit. See art. IV, § 1 ("The Organization shall enjoy immunity from suit and every form of judicial process [absent waiver].").

Because the Headquarters Agreement was self-executing, see S. Treaty Doc. No. 40, at III, no Act of Congress was needed to afford the OAS the absolute immunity it now required. But in submitting the Headquarters Agreement to the President, the State Department made clear that by affording the OAS "full immunity from judicial process," the agreement went "beyond the usual United States practice of affording restrictive immunity," "[i]n exchange" for requiring the organization to "'make provision for appropriate modes of settlement of those disputes for which jurisdiction would exist against a foreign government under the Foreign Sovereign Immunities Act.'" *Id.* at VI.

3. Indeed, the State Department has repeatedly expressed the same view about the scope of jurisdictional immunity afforded to international organizations under the IOIA since the United States' adoption of the restrictive theory of foreign sovereign immunity. See Letter from Roberts B. Owen, Legal Adviser, to Leroy D. Clark, Gen. Counsel, Equal Emp't Opportunity Comm'n 2 (June 24, 1980) ("By virtue of the FSIA, and unless otherwise specified in their constitutive agreements, international organizations are now subject to the jurisdiction of our courts in respect of their commercial activities, while retaining immunity for their acts of a public character."); Letter from Detlev F. Vagts, Office of the Legal Adviser, to Robert M. Carswell, Jr., OAS 2 (Mar. 24, 1977) (*Vagts Letter*) (stating that the IOIA

"links" the jurisdictional immunity of international organizations and that of foreign sovereigns), available at D. Ct. Doc. No. 22-7, at 41-42 (Sept. 18, 2015); Pet. Br. 8-9 (collecting additional Executive Branch statements).[8]

This longstanding interpretation—evinced by actions of both political Branches—of the privileges and immunities afforded by the IOIA in order to fulfill the United States' international obligations deserves deference.

### C. The Court of Appeals' View Of International Organization Immunity Would Present Practical Problems And Is Not Required By Respondent's Policy Concerns

Adopting the court of appeals' view of the jurisdictional immunities afforded international organizations under Section 288a(b) would present practical difficulties and is not justified by the policy concerns asserted by respondent.

1. As an initial matter, if Section 288a(b) were interpreted to incorporate the law of foreign sovereign immunity as it existed in 1945, courts would then need to decide whether Congress intended to incorporate the substantive rules of foreign sovereign immunity applicable in 1945 or the procedural ones. As noted above, in 1945, federal courts followed a "two-step procedure" for determining the immunity of a foreign state from a particular suit. *Samantar* v. *Yousuf*, 560 U.S. 305, 311 (2010). The foreign state first could ask the State Department for a "suggestion of immunity." *Ibid.* (citation

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[8] In a 2006 brief filed in the Second Circuit, the United States cited *Atkinson* for the proposition that the IOIA provides absolute immunity. U.S. Amicus Br. at 17 n.*, *EM Ltd.* v. *Republic of Argentina*, No. 06-403. The government's brief did not contain any independent analysis of Section 288a or the Executive Branch's historical practice under the IOIA, and does not reflect the United States' longstanding interpretation of the provision.

omitted). If the State Department obliged, "the district court surrendered its jurisdiction." *Ibid.* Otherwise, the court would generally "decide for itself whether all the requisites for such immunity existed," applying the "established policy" of the State Department. *Id.* at 311-312 (citation omitted).

The court of appeals and respondent have both assumed that, if Section 288a(b) incorporates foreign sovereign immunity law as it existed in 1945, it incorporates only the *substantive* standards—the then-"established policy," *Samantar*, 560 U.S. at 312, of the State Department—not the two-step procedure. See *Atkinson*, 156 F.3d at 1341; Br. in Opp. 14. But neither the court nor respondent explains why that would be so. See *Vagts Letter* 1 (indicating that the State Department initially filed suggestions of immunity for international organizations following the enactment of the IOIA).

Moreover, even if the static view of Section 288a(b) would incorporate only the substantive standards that prevailed in 1945, there could remain some uncertainty in determining the contours. Section 288a(b) affords "international organizations, their property and their assets * * * the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." 22 U.S.C. 288a. Although the State Department generally afforded "virtually absolute immunity" from suit to foreign governments in 1945, *Verlinden*, 461 U.S. at 486, there was some uncertainty regarding the immunity of state-owned merchant vessels. *Compare The Pesaro*, 277 F. at 479 n.3 (noting the State Department's view that no immunity should be provided "government-owned merchant vessels * * * employed in commerce"), with *Berizzi Bros. Co.* v. *Steamship Pesaro*, 271 U.S. 562, 570 (1926) (affording immunity to the

same ship, despite the State Department's views); cf. *Hoffman*, 324 U.S. at 35 n.1 (criticizing without expressly overruling *Berizzi Bros.*). And the State Department had also expressed the view that "agencies of foreign governments engaged in ordinary commercial transactions in the United States enjoyed no privileges or immunities not appertaining to other foreign corporations, agencies, or individuals doing business here." *United States* v. *Deutsches Kalisyndikat Gesellschaft*, 31 F.2d 199, 200 (S.D.N.Y. 1929).

Under the court of appeals' view, courts would therefore have to determine any disputed metes and bounds of foreign sovereign immunity, as they existed in the policies of the State Department and in federal courts some 70 years in the past—and perhaps in circumstances that neither ever faced or that did not closely fit the situation of a particular international organization. Cf. *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004) (refusing to adopt an interpretation of the FSIA that would require courts, in some cases, "to follow the same ambiguous and politically charged standards that the FSIA replaced") (internal quotation marks and citation omitted).

2. In their response to the certiorari petition, respondent raised policy concerns about an interpretation of Section 288a(b) under which an international organization's immunity would conform to that of a foreign state at the time of suit. "The role of this Court," however, "is to apply the statute as it is written," regardless whether it thinks "some other approach might 'accor[d] with good policy.'" *Burrage* v. *United States*, 571 U.S. 204, 218 (2014) (citation omitted; brackets in original). In any event, respondent's concerns are misplaced.

a. Respondent contends that such an interpretation would be "inconsistent with the principles animating international-organization immunity," which, respondent suggests, include that an individual member "'ought not be able to exercise power, through its national courts, over the execution of the Organization's functions'" that are "'determined * * * collectively.'" Br. in Opp. 22 (citation omitted). But when member states determine that the functions of an international organization require a particular level of immunity, they are free to specify as much in the agreement establishing the organization—and they have done so. See pp. 25-28, *supra*; see also, *e.g.*, Agreement Establishing the Asian Development Bank, art. 50, *entered into force* Aug. 22, 1996, 17 U.S.T. 1418, T.I.A.S. No. 6103 (providing Asian Development Bank "immunity from every form of legal process, except in cases arising out of or in connexion with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities"); 22 U.S.C. 285g (giving "full force and effect" to Article 50 "in the United States"). The scope of the immunity afforded by the IOIA will have no effect on the United States' fulfillment of these international obligations. See *Bzrak* v. *United Nations*, 597 F.3d 107, 112 (2d Cir.) (declining to determine the scope of immunity afforded the United Nations under the IOIA, because the Convention on Privileges and Immunities of the United Nations, *entered into force* Apr. 29, 1970, 21 U.S.T. 1418, T.I.A.S. No. 6900, directly granted the UN absolute immunity), cert. denied, 562 U.S. 948 (2010).

b. Respondent also expresses concern (Br. in Opp. 22) that, under the restrictive theory of immunity,

"nearly all of the[] activities" of some international organizations might be subject to lawsuits in U.S. courts. But the FSIA's commercial-activity exception is not an authorization of just any commercial suit. Rather, it imposes a number of requirements including, for example, that the action be "based upon a commercial activity carried on *in the United States*," 28 U.S.C. 1605(a)(2) (emphasis added). This Court has construed that language to permit suit only when the "'particular conduct' that constitutes the 'gravamen' of the suit" is commercial activity occurring in the United States. *OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390, 396 (2015) (citation omitted). When the gravamen of a complaint is conduct that was either not of a commercial nature or occurred abroad, the commercial-activity exception does not apply, even if the suit is otherwise related to the defendant's domestic commercial activities. *Id.* at 396-397. Incorporating the FSIA standard of immunity for international organizations is therefore unlikely to open the floodgates of litigation, even against international organizations, like the IFC, that "focus on financial transactions." Br. in Opp. 22.

Moreover, international organizations can further reduce their exposure to litigation in other ways by, for example, clarifying whether commercial agreements are intended to create third-party-beneficiary rights. Cf. Pet. App. 9a & n.4 (noting that petitioners raise a "third party beneficiary claim" based on environmental and social risks provisions in the loan agreement). Other defenses, such as *forum non conveniens*, may also be available. See *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981).

In any event, there is no indication that, when Congress enacted the IOIA, such policy concerns led it to

provide international organizations greater immunity from suit than that conferred on foreign states. To the contrary, the legislative history is replete with statements reflecting a commitment to put international organizations' immunity on par with that afforded to foreign sovereigns. See, *e.g.*, Senate Report 1 ("The basic purpose of this title is to confer upon international organizations * * * privileges and immunities of a governmental nature."); *id.* at 2 ("[I]n cases where th[e] Government associates itself with one or more foreign governments in an international organization, there exists at the present time no law * * * extend[ing] privileges of a governmental character."); *id.* at 4 (Section 288a extends to international organizations the privileges and immunities "accorded foreign governments under similar circumstances"). And Congress enacted text precisely crafted to that purpose. Foreign governments engaged in commercial activities within the United States are subject to suit in U.S. courts. 28 U.S.C. 1605(a)(2). That the IOIA leaves respondent also subject to suit in similar circumstances is consistent with Congress's judgment in Section 288a(b).

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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